

### REMARKS

In the February 17, 2010 Office Action, all of pending claims 1, 3-7, 10 and 11 stand rejected in view of prior art. No other objections or rejections were made in the Office Action.

#### *Status of Claims and Amendments*

In response to the February 17, 2010 Office Action, none of the claims are being amended by the current Amendment. Thus, claims 1, 3-7, 10 and 11 are pending, with claim 1 being the only independent claim. Reexamination and reconsideration of the pending claims are respectfully requested in view of the following comments.

#### *Rejections - 35 U.S.C. § 103*

On pages 2-7 of the Office Action, claims 1, 10 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0029266 (Barbera-Guillem) in view of U.S. Patent Nos. 6,429,008 (Copeland) and 4,336,329 (Hesse). Claims 3-7 are rejected as being unpatentable over the Barbera-Guillem publication in view of the Copeland patent and the Hesse patent and further in view of U.S. Patent Application Publication No. 2002/0098117 (Ammann) or U.S. Patent No. 6,518,059 (Butts). In response, Applicant respectfully traverses the rejections as explained below.

Independent claim 1 requires a temperature control device for culturing fungi at a predetermined culturing temperature, the temperature control device comprising:

- a cassette for holding a culture medium for culturing microorganisms or cells;
- a heating mechanism configured to heat said cassette;
- a cooling mechanism configured to cool said cassette;
- a temperature-setting unit configured to set at least approximately 27°C and 30 to 32°C as said predetermined culturing temperature by switching between those temperatures;
- a heating-and-cooling control unit configured to control operations of said heating mechanism and said cooling mechanism based on a temperature set by said temperature-setting unit; and

a communication unit through which *a plurality of said temperature control devices are connected to each other*. Contrary to the assertions of the Office Action, this arrangement is *not* disclosed or suggested by the Barbera-Guillem publication, the Copeland et al. patent, the Hesse et al. patent, the Ammann et al. publication and/or the Butts patent, singularly or in combination.

First, with respect to the Barbera-Guillem publication, the Office Action asserts that "Figure 91 indicates that a communication unit (1000) is further provided for accommodating a plurality of cassettes such that each cassette is in communication with other cassettes". However, in claim 1 of the present application, a plurality of cassettes do not communicate with each other, but a plurality of temperature control devices communicate with each other. On the other hand, in Fig. 91 the Barbera-Guillem publication, a plurality of cassettes are connected to one thermoelectric device 1060, and this is controlled by one control electronics 1055. Thus, even if the control electronics 1055 is regarded as the temperature control device of claim 1 of the present application, there is no suggestion that this is in communication with other temperature control devices, and therefore, the claimed communication unit is not disclosed in this reference (it is true that the control electronics 1055 is wired to the outside, but they are power switches 1057 and batteries 1057). In addition, communication about cassettes is described in [0319]-[0323] of the Barbera-Guillem publication. However, it is not a description about communication unit.

The remaining references do not account for the deficiencies of the Barbera-Guillem publication. In particular, the arrangement is the same for other cited references Copeland and Hesse as the Barbera-Guillem publication. Furthermore, the Ammann et al. publication and/or the Butts patent also lack a communication unit through which *a plurality of said temperature control devices are connected to each other*. Accordingly, even if the references cited in the Office Action were combined as suggested in the Office Action, the hypothetical device created by this hypothetical combination would not include all of the elements of independent claim 1. Accordingly, withdrawal of this rejection of independent claim 1 is respectfully requested.

Moreover, under U.S. patent law, the mere fact that the prior art can be modified does *not* make the modification obvious, unless an *apparent reason* exists based on evidence in the record or scientific reasoning for one of ordinary skill in the art to make the

modification. See, *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). The KSR Court noted that obviousness cannot be proven merely by showing that the elements of a claimed device were known in the prior art; it must be shown that those of ordinary skill in the art would have had some "apparent reason to combine the known elements in the fashion claimed." *Id.* at 1741. The current record lacks any apparent reason, suggestion or expectation of success for combining the patents/publications, and then further modifying the hypothetical device created by this hypothetical combination in order to create Applicants' unique arrangement of independent claim 1.

Moreover, Applicant believes that dependent claims 2-7, 10 and 11 are also allowable over the prior art of record in that they depend from independent claim 1, and therefore are allowable for the reasons stated above. Also, dependent claims 2-7, 10 and 11 are further allowable because they include additional limitations, which in combination with the limitations of independent claim 1, are not disclosed or suggested by the prior art. Accordingly, Applicant respectfully requests that the rejections of dependent claims 2-7, 10 and 11 be withdrawn in view of the above comments.

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In view of the foregoing amendment and comments, Applicant respectfully asserts that claims 1, 3-7, 10 and 11 are now in condition for allowance. Reexamination and reconsideration of the pending claims are respectfully requested.

Respectfully submitted,

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